

*** THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
*THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ W.A.NO. 227 OF 1998

W.A.No. 227 of 2006:

% 25.07. 2006

#The Environment Protection Training & Research Institute rep.,by
it's A.P.Chairman & Chief Secretary to Govt. A.P. Secretariat,
Hyderabad and another.

..... Petitioners

Vs.

1. \$ P.B.B. Narasimha Rao.

....Respondent.

! Counsel for the Appellants: Sri D.V. Sitaram
Murthy

^ Counsel for the Respondent: Sri M. Surender Rao
< Gist:

>Head Note

? Citations:

[1] 1997(2) SLR 433

2 2000(2) SLR 392 (Calcutta High Court)

3 1999(4) SLR 623 (Rajasthan High Court)

4 1999(5) ALD 60

5 AIR 1977 SC 456

6 AIR 1985 SC 703

7 1996(1) ALD 528

8 (2006) II SLT 192

9 AIR 1964 SC 364

10 (1996) 1 SCC 327

11 (1998) 8 SCC 1

12 (2003) 1 SCC 692

13 (2005) 11 SCC 451

¹⁴ AIR 1955 SC 425

¹⁵ AIR 1964 SC 1419

¹⁶(1976) 2 SCC 82

¹⁷ (2002)4 SCC 638

**THE HON'BLE SRI JUSTIE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

W.A.No. 227 of 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Appeal is against the order in W.P.No.27159 of 2005 dated 14.2.2006 whereby the proceedings dated 07.12.2005, issued by the Appellants herein calling upon the respondent-writ petitioner to submit his representation to the charges held proved and asking him to show cause as to why the penalty specified in Section 4, Rule 4.2 of the Staff Rules and Service Regulations of EPTRI should not be imposed, was quashed, the report of the enquiry officer set aside and the enquiry officer was directed to resume proceedings from the stage where the petitioner raised his objection to the competence of the Presenting Officer.

Facts, to the extent necessary, are that the petitioner, an Administration and Accounts Officer in the Appellant – Institute, was placed under suspension vide proceedings dated 6.6.2005. A charge sheet dated 17.6.2005 was issued calling upon him to submit his explanation. The petitioner submitted his explanation, to the charge sheet, vide letter dated 21.7.2005. Sri K.Kumar was appointed as the enquiry officer and Sri T.V.Satish Babu,

Administration Incharge of the Institute was appointed as the presenting officer. The petitioner, vide letter dated 29.10.2005, contended that, under the prescribed procedure, the presenting officer must be superior in rank to the charged employee and since the presenting officer Sri T.V. Satish Babu was subordinate to him, he could not have been appointed as the presenting officer. This objection was over-ruled by the enquiry officer on 10.11.2005. The enquiry officer proceeded with the enquiry and submitted his report holding that the charges framed against the petitioner was established. The disciplinary authority issued show cause notice dated 7.12.2005 calling upon the petitioner to explain as to why punishment should not be imposed on him.

It is this show cause notice, dated 7.12.2005, which was the subject matter of challenge in W.P.No. 27159 of 2005. The learned Judge framed two questions for consideration (1) Whether the Presenting Officer was not qualified to be appointed as such and (2) Whether the impugned show cause notice suffered from any infirmity. On the first question, the learned Judge referred to Clause 14 of the conditions of service of the Institute and held that government orders were not per se applicable to the service in the institute and it was only when they were accepted and authenticated by the Board that such government orders became applicable. The learned Judge held that since the petitioner was not able to place any proceedings or orders through which the Board of the Institute had adopted the Memo dated 1.5.1993, and in view of the clear legal and factual position, the necessity to delve into the rival contentions as to the equation of the status of the petitioner on the one hand and of the Presenting Officer on the other was obviated. The learned Judge held this question against

the petitioner.

On the second question, the learned Judge took note of the fact that the petitioner had submitted an appeal to the 1st appellant herein on 16.11.2005, against the order of the enquiry officer dated 10.11.2005, that he had also brought this fact, of an appeal being preferred, to the notice of the enquiry officer, vide letter dated 16.11.2005, despite which the enquiry officer had proceeded to examine the witnesses and to record his findings without participation of the petitioner. The learned Judge held that, even assuming that the appeal preferred by the petitioner was either not maintainable or did not merit consideration, fairness required that the enquiry proceedings were deferred till the appeal itself was disposed of one way or the other. The learned judge held that, in disciplinary proceedings, fairness in procedure was an important protection guaranteed to an employee and since the appellate authority did not pronounce upon the objection raised, the petitioner was entitled to await such an outcome and his non-participation in the enquiry proceedings could not be said to be without basis. The learned Judge held that the proceedings in the enquiry, subsequent to the order of the enquiry officer dated 10.11.2005, became unilateral in nature and the procedural safeguards stood denied to the petitioner. Taking note of the contention, urged on behalf of the appellants herein, that the petitioner did not suffer any detriment and it was not necessary to given him an opportunity afresh, much less to set at naught the show cause notice, the learned Judge held that once it emerged that the petitioner was denied the opportunity to participate in the enquiry proceedings he should not be made to suffer and that prejudice was apparent. The learned Judge held that submission

of the enquiry report without participation of the petitioner in the enquiry, particularly when the appeal preferred by the petitioner was pending, and the resultant show cause notice issued on the basis of such report would defeat the very element of fairness which were embedded at various stages of the disciplinary proceedings and that the petitioner deserved to be given an opportunity. The learned Judge set aside the report of the enquiry officer and the show cause notice and directed the enquiry officer to resume proceedings from the stage where the petitioner raised objection as to the competence of the presenting officer. The learned Judge directed that the petitioner appear before the enquiry officer within one week from the date of the order by himself or together with his defence assistant, that examination or cross-examination of witnesses should be completed by the petitioner within one week from the date of his first appearance, that a fresh report should be submitted and that further proceedings would depend on the outcome of the enquiry.

Sri D.V.Sitaram Murthy, learned counsel for the Appellants, would submit that this Court, in proceedings under Article 226 of the Constitution of India, would interfere with a show cause notice only if it was passed by an incompetent authority or was without jurisdiction and since, in the present case, both these requirements were absent, no interference was called for and the petitioner should have been relegated to raise all objections by way of his reply to the show cause notice. Learned counsel would submit that no appeal is provided under the Rules, against the ruling of the enquiry officer during the course of enquiry proceedings, that the appeal filed by the petitioner on 16.11.2005

was not an appeal under the Rules and that it was not open to the charged employee to abstain from participating in the enquiry on the specious plea that he had submitted a representation to the disciplinary authority. Learned counsel would contend that the disciplinary authority was not obligated to consider and pass orders on each and every representation of the delinquent employee. Learned counsel would state that, despite being specifically informed during the course of the enquiry proceedings itself that the enquiry would continue the petitioner had, on his own accord, chosen to abstain and he could not, therefore, take advantage of his own wrong and seek a fresh opportunity to be given to him and that the enquiry be held afresh from the stage of his abstinence. Learned counsel would submit that principles of natural justice cannot be stretched to such an extent as to hold that a delinquent employee was entitled to abstain from the departmental enquiry or that the enquiry officer should defer the enquiry proceedings till each and every representation of his was decided by the disciplinary authority. Learned counsel would state that, even in judicial proceedings, unless the appellate court grants stay, mere filing of an appeal would not preclude the lower court from continuing with the proceedings pending before it. Learned counsel would submit that this Court, in proceedings under Article 226 of the Constitution of India, would not interdict a disciplinary enquiry since all these questions could be gone into, if need be, after final orders are passed by the disciplinary authority, or the appellate authority, as the case may be. Learned counsel would rely on **Rae Bareilly Kshetriya Gramin Bank v. Bhola Nath Singh**^[1] in support of his submission that this Court, under Article

226 of the Constitution of India, would not act as an appellate authority and would interfere only when the procedure, prescribed under the rules for conducting a departmental enquiry, was violated. Learned counsel would submit that, in the instant case, no such procedural rule has been violated necessitating interference under Article 226 of the Constitution of India. He would rely on **Garfa Co-operative Stores Ltd v. Ld. Second Industrial Tribunal, West Bengal**^[2] and **Bhanwar Singh v. State of Rajasthan**^[3] in support of his submission that where the delinquent employee remains absent and does not participate in the enquiry despite having knowledge thereof, he cannot contend later that the enquiry proceedings are vitiated. Learned counsel would rely on **J. Pullaiah v. A.P.S.R.T.C**^[4] to contend that this Court, under Article 226 of the Constitution of India, at the stage of the final show cause notice and at the fag end of the enquiry, would not interdict disciplinary proceedings. In support of his submission that a show cause notice is not an order affecting anyone's right and that this Court would interfere only when it is issued by an incompetent authority or is without jurisdiction, learned counsel would place reliance on **Geep Flashlight Industries Ltd v. Union of India**^[5], **Chief of the Army Staff v. Major Dharam Pal Kukrety**^[6] and **Adapa Goverdhana Rao v. Deputy Registrar of Cooperative Societies, Machilipatnam**^[7].

Sri M.Surender Rao, learned counsel for the respondent – writ petitioner, on the other hand, would submit that since it is not in dispute that the petitioner had preferred an appeal to the disciplinary authority, even if it is considered to be a

representation and not an appeal, fairness required the enquiry officer to either adjourn the enquiry or at least inform the petitioner of his intention not to do so, in which event the petitioner would have participated in the enquiry. Learned counsel would submit that as there was no intimation from the enquiry officer, and since the respondent-writ petitioner was not aware of the subsequent date of enquiry, his absence on the next date of hearing could not be said to be deliberate. Learned counsel would submit that principles of natural justice required the enquiry officer, at least, to inform the petitioner of his intention to proceed with the enquiry and the next date of hearing. Learned Counsel would contend that, since the enquiry proceedings were continued in his absence, the petitioner was deprived of his right to cross-examine witnesses and to adduce evidence in his defence. Learned counsel would submit that since the jurisdiction of this Court, under Article 226 of the Constitution of India, is discretionary, and as the learned Judge had exercised his discretion and had passed an equitable order in the writ petition, such exercise of discretion did not call for interference by an appellate court. Learned counsel would submit that the impugned show cause notice was a mere ritual, an empty formality and that its result was a foregone conclusion. According to the learned counsel, the opportunity which the petitioner may have to question the validity of the enquiry proceedings, after final orders are passed by the disciplinary authority/appellate authority, would result in his remaining out of employment during the pendency of the writ petition. Learned counsel would submit that, as the enquiry proceedings as held was in violation of principles of natural justice, it was open to the delinquent employee to question those proceedings without being required to submit his reply to the

show cause notice. Learned counsel would place reliance on **South Bengal State Transport Corporation v. Swapan Kumar Mitra**^[8] in this regard.

The enquiry officer holds the enquiry, against the delinquent employee, as a delegatee of the disciplinary authority. The object of the enquiry is to enable the employer to hold an investigation, into the charges framed against the delinquent employee, so that the employer can, in due course, consider the evidence adduced and decide whether the said charges are proved or not. The interposition of the enquiry, which is held by a duly appointed enquiry officer, does not alter the true legal position that it is the employer who is empowered to decide whether the evidence on record is sufficient to hold the charges as established and on the nature of punishment to be imposed on the delinquent employee. (**Union of India Vs. H.C. Goel**^[9]).

Since questions, as to whether the charges leveled against a delinquent employee are established or not, whether the findings of the enquiry officer require acceptance and the nature and extent of the punishment to be imposed on a delinquent employee for proved misconduct, are all matters for the disciplinary authority to decide, it is only after a decision has been taken in this regard, and after the departmental remedies of an appeal are exhausted, would a challenge thereto be, normally, entertained by this Court in proceedings under Article 226 of the Constitution of India. Since matters relating to conduct and discipline of employees are in the employer's realm this Court would, normally, not interdict disciplinary proceedings till its culmination in the imposition of a punishment and on such punishment being confirmed or modified

in appeal.

In the case on hand, the proceedings under challenge is a notice calling upon the petitioner to show cause as to why punishment should not be imposed on him. The grievance which the petitioner has, of the enquiry being proceeded without giving him an opportunity of cross-examining the witnesses and adducing evidence in his defence, could have been ventilated by him in his reply to the show cause notice. Unless the notice, to show cause, is issued by an incompetent authority or is without jurisdiction this Court would not, normally, interfere and would relegate the petitioner to the submission of a reply thereto.

Now the judgments in this regard.

In **Geep Flashlight Industries Ltd⁵**, a notice, given to the Appellant under Section 131(3) of the Customs Act for revision of the earlier order, was impeached. The appellant invoked the jurisdiction of the Delhi High Court under Article 226 of the Constitution of India and sought for a writ of prohibition restraining the authorities from conducting proceedings pursuant to the impugned notice. The appellant also sought for a writ of certiorari to quash the notice and a writ of mandamus not to withhold the excess duty paid and for an order that the earlier amount paid be refunded. The Delhi High Court held that all the objections which the appellant wished to raise to the notice, including the objections raised in the writ petition, should be raised before the Central Government. Challenge thereto, was rejected by the Supreme Court holding:-

“....The appellant’s prayers for writs of certiorari and mandamus are misconceived. There is no order either judicial or quasi-judicial which can attract certiorari. **No mandamus can go because there is nothing which is required to be done or forborne under the Act. The issue of the**

notice in the present case requires the parties to represent their case. There is no scope for mandamus to do any duty or act under the statute. A writ of prohibition cannot be issued for the obvious reason that the Central Government has jurisdiction to revise.....”(emphasis supplied)

In **Major Dharam Pal Kukrety**⁶, the Supreme Court observed:-

“.....We will first deal with the appellants’ preliminary objection that the respondent’s writ petition was not maintainable as being premature. It was the respondent’s case that the Chief of the Army Staff had no jurisdiction to issue the impugned show-cause notice after he had been again found not guilty by the court-martial on revision. The said notice expressly stated that the Chief of the Army Staff was of the opinion that the respondent’s misconduct as disclosed in the proceedings rendered his further retention in service undesirable and asked him to submit his explanation and defence, if any, to the charges made against him. If the respondent’s contention with respect to the jurisdiction of the Chief of the Army Staff to issue the said notice were correct, the respondent was certainly exposed to the jeopardy of having his explanation and defence rejected and he being removed or dismissed from services. Were the said notice issued without jurisdiction, the respondent would have then suffered a grave, prejudicial injury by an act which was without jurisdiction. Where the threat of a prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for the injury to be caused to him before seeking the court’s protection. If, **on the other hand, the Chief of the Army Staff had the power in law to issue the said notice, it would not be open to the respondent to approach the court under Article 226 of the Constitution at the stage of notice only and in such an event his writ petition could be said to be premature.** This was, however, not a contention which could have been decided at the threshold until the court had come to a finding with respect to the jurisdiction of the Chief of the Army Staff to issue the impugned notice. Having held that the impugned notice was issued without any jurisdiction, the High Court was right in further holding that the respondent’s writ petition was not premature and was maintainable.....” (emphasis supplied)

The Apex Court, in **Executive Engineer, Bihar State**

Housing Board v. Ramesh Kumar Singh^[10], held:-

“..... We are concerned in this case, with the entertainment of the writ petition against a show-cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a ‘nullity’ or totally “without jurisdiction” in the traditional sense of that expression — that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. **In such a case, for**

entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.....” (emphasis supplied)

In **Whirlpool Corpn. v. Registrar of Trade Marks**^[11], the Supreme Court held thus:-

“.....Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the “Tribunal”.....”

The Apex Court, in **Bhaiji v. Sub-Divisional Officer, Thandla**^[12] laid down:-

“.....The petition filed by the writ petitioner before the High Court was entirely misconceived and, in a way, premature. The show-cause notice issued by the Sub-Divisional Officer cannot be said to be without jurisdiction. The appellant should have participated in the enquiry after showing cause. Instead he chose to rush post-haste to the High Court. The High Court rightly turned down the writ petition.....” (emphasis supplied)

In **State of U.P. v. Anil Kumar Ramesh Chandra Glass Works**^[13], the Supreme Court observed:-

“.....In any event, this Court had repeatedly held that Article 226

should not be permitted to be invoked in order to challenge show-cause notices unless accepting the fact in the show-cause notices to be correct, either no offence is disclosed or the show-cause notices are ex facie without jurisdiction. That could not be said as far as the eight show-cause notices in question are concerned. The High Court, therefore, should not have interfered and should have left the respondents to pursue their remedy by way of an appeal under Section 9 of the Act from the order of assessment which, according to the High Court, had admittedly been passed before the writ petition had been filed by the respondent.....” (emphasis supplied)

In **Adapa Goverdhana Rao**⁷, this Court held:-

“.....The petitioner has also alleged that the impugned action was taken by the first respondent at the behest of the third respondent Minister for collateral and extraneous considerations and therefore the action is tainted by mala fide. **I do not find any necessity to go into those allegations at this stage inasmuch as the petitioner has approached this court against the show cause notice issued by the first respondent under Section 34(1) of the Act. The petitioner has an opportunity to show cause against the impugned notice and if the first respondent is satisfied that the objections that may be put forth by the petitioner are valid and well founded, the first respondent may drop further proceedings in pursuance of the impugned notice.** In that view of the matter I think that the consideration of plea of mala fide at this stage is premature. The said plea is kept open to be agitated and considered if an occasion arises in future.....” (emphasis supplied)

The extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India maybe invoked, to question the validity of a notice to show cause, if the authority has no power or jurisdiction to enter upon the enquiry in question. If the authority has the power to issue the notice, the writ petition filed challenging the said notice would be premature. In such cases, the only remedy is to show cause by submitting a reply there to, and in the event of an adverse decision to assail the same in appeal and thereafter, if need be, invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Since the notice issued is only to enable the delinquent employee to show cause, no mandamus can be issued to have such proceedings set aside.

Sri M.Surendra Rao, learned counsel for the respondent – writ petitioner, would however rely on certain observations of the Apex Court in **Swapan Kumar Mitra**⁸:-

“ We are unable to agree with this view of the Division Bench. In **Roshan Di Hatti v. CIT: (1968)68 ITR 177** this Court, while considering the question of perversity of a finding, held that when the finding of fact was arrived at without any material or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law would have come to that determination, the decision can be said to be perverse. It is, however, true that if perversity is shown and proved, it would be open to the writ court to hold as such. But, in our view, this was not a case of perverse finding. It appears that the disciplinary authority on consideration of the reports of the inquiry officer and the District Magistrate and evidences adduced before them, came to a conclusion of fact that it was due to rash and negligent driving of Respondent 1, the accident had occurred and as a result of this, 15 lives were lost and some passengers were seriously injured. However, it cannot be said that for non-supply of the inquiry report, it can legitimately be held that such a finding of the disciplinary authority was perverse in nature. In any view of the matter, when copies of the inquiry report have been directed, by the learned Single Judge, to be supplied to Respondent 1, and thereafter the departmental proceedings to continue there was no earthly reason for the Division Bench to interfere with such an order and decide the matter by going into the merits and direct quashing of the departmental proceeding at the appellate stage.....” (emphasis supplied)

It is no doubt true that in cases where a finding of fact is arrived at without any material or upon a view of the facts which could not reasonably be entertained or if the facts found were such that no person acting judicially, and properly instructed as to the relevant law, would have come to that determination, the decision can be said to be perverse. The question which we are required to examine, however, is whether this Court should interdict disciplinary proceedings at the stage of a show cause notice. It is necessary to note that in **Swapan Kumar Mitra**⁸, the challenge to the enquiry officer's findings was only after the order of removal from service had been passed and was not, as in the present case, prior to completion of the disciplinary proceedings.

On the sole ground that the petitioner ought to have submitted his reply to the show cause notice, instead of invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, the writ appeal must be allowed and the writ petition dismissed.

The contention of Sri M. Surender Rao, learned Counsel for the respondent, that since this Court has exercised its discretion, entertained the writ petition and adjudicated the matter on merits, the Appellate Court ought not to interfere with such discretion, however, requires to be examined.

The learned judge, in W.P.No.27159/2005 dated 14.2.2006, held that in proceeding with the enquiry, without awaiting orders being passed by the disciplinary authority on the petitioner's representation, the enquiry officer had acted in violation of principles of natural justice.

Sri D.V. Sitaram Murthy, learned Counsel for the appellant, would place before us the docket proceedings of the enquiry. On a perusal thereof, it is seen that on 10.11.2005 the enquiry officer gave his ruling on the objection raised by the petitioner regarding participation of Sri T.V. Satish Babu as the presenting officer. After giving his ruling, the enquiry officer adjourned the enquiry to 14.11.2005 on which date the petitioner submitted a petition informing the enquiry officer that he was preferring an appeal, against his ruling, to the competent authority. The enquiry officer recorded, in the enquiry proceedings itself, that, since his orders were clear and there was no anomaly, the enquiry would be continued forthwith by examining the witnesses. The petitioner signed the said docket proceedings which would establish that he was aware that the enquiry officer had not acceded to his request to defer the enquiry proceedings.

In fact, the enquiry was continued on that day and was held continuously thereafter on 15th, 16th, 17th and 18th November 2005. The contention of Sri D.V. Sitaram Murthy, that, mere submission of a representation by the delinquent employee to the disciplinary authority, would neither necessitate adjournment of the enquiry nor would it preclude the enquiry officer from continuing with the enquiry proceedings, more so when the petitioner was made aware that the enquiry would be held continuously, cannot be said to be without merit. It is necessary to note that no rule, which requires the enquiry officer to adjourn the enquiry on the mere asking of a delinquent employee, has been brought to our notice. We make it clear that we are not examining on merits, the justification or otherwise of the enquiry officer in proceeding with the enquiry when the petitioner had submitted a representation, against his ruling, to the disciplinary authority. We have only referred to these facts to indicate that since two different views are possible on this issue this Court ought not to have exercised its discretionary jurisdiction, under Article 226 of the Constitution of India, to interdict disciplinary proceedings prior to its culmination i.e., before final orders are passed by the disciplinary authority. On a final decision of the disciplinary authority, being challenged this Court would have the advantage of examining the reasons assigned by the disciplinary authority to the objections raised by the delinquent employee in his reply to the final show cause notice.

In **Sangram Singh Vs. Election Tribunal**^[14], the Supreme Court observed :-

“..... The High Courts do not and should not, act as Courts of appeal under Art. 226. Their powers are purely discretionary and

though no limits can be placed upon that discretion it must be exercise along recognised lines and not arbitrarily: and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as special as may be.....” (emphasis supplied)

In **Tansingh Nathmal Vs. Superintendent of Taxes**^[15],

the Supreme Court held:-

“..... The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Art. 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.....” (emphasis supplied)

The Apex Court, in **Rohtas Industries Ltd. v. Rohtas Industries Staff Union**^[16], held:-

“.....But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extra-ordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people’s sentinel on the *qui vive* and to cut back on or liquidate that power may cast a peril to human rights.....” (emphasis supplied)

While the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India is discretionary and no limits can be placed upon the manner of its exercise, the High Court exercises discretion within certain self imposed limitations, few of such being that it would not, normally, interdict disciplinary proceedings prior to imposition of punishment nor would it examine the validity of a show cause notice, unless it is passed by an incompetent authority or is without jurisdiction.

The relief sought for in the writ petition was for a mandamus to declare the action of the appellants herein, in issuing the show cause notice dated 07.12.2005, as illegal, arbitrary, in violation of principles of natural justice and in violation of Articles 14, 16 and 21 of the Constitution of India.

In **Director of Settlements, A.P. Vs. M.R. Apparao**^[17], the Supreme Court observed:-

“.....the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression “for any other purpose”. **The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and**

subject to certain self-imposed limitations. The expression “for any other purpose” in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. “**Mandamus**” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. **In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right *must be subsisting on the date of the petition* (Kalyan Singh v. State of U.P.: AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.....” (emphasis supplied)**

As held in **Geep Flashlight Industries Limited⁵**, and in **M.R. Apparao¹⁷**, in the absence of a legal right, existing in favour of the person aggrieved, to the performance of a legal duty by the party against whom mandamus is sought, no mandamus can be issued. As noted above the Rules do not provide that, on the mere asking of a delinquent employee, the disciplinary proceedings must be adjourned. In the absence of any legal duty cast on the Appellants herein under the rules, neither can mandamus be issued interdicting disciplinary proceedings nor can a show cause notice be set aside. Among the self imposed limitations under Article 226 of the Constitution of India is that the power to issue a mandamus must, normally, be exercised only when the Court

comes to the conclusion that the aggrieved person has a legal right which entitles performance of a legal duty by the public authority which can be enforced by issuance of a writ of mandamus. Since no right of the petitioner herein can be said to have been infringed, on the mere issuance of a show cause notice, this Court would not exercise its discretionary jurisdiction under Article 226 of the Constitution of India. The contention that the show cause notice is an empty formality is only required to be noted to be rejected. We have no manner of doubt that the Appellants herein shall consider the objections raised by the petitioner, in reply to the show cause notice, on its own merits and in accordance with law.

The writ appeal is allowed and the order in W.P.No. 27159 of 2005 dated 14.02.2006 is set aside, leaving it open to the respondent-writ petitioner, if he so chooses, to submit his reply to the impugned show cause notice dated 07.12.2005. In case the respondent-writ petitioner submits his reply within three weeks from today, the same shall be considered on its merits, without being influenced by any observations made in W.P.No. 27159 of 2005 or in this Appeal, and a reasoned order shall be passed by the Appellants herein in accordance with law.

The writ appeal is allowed. However, in the circumstances, without costs.

B.PRAKASH RAO, J

Date: -07-2006

RAMESH RANGANATHAN, J

Note: L.R. copy to be marked
B/o

[\[1\]](#) 1997(2) SLR 433
[\[2\]](#) 2000(2) SLR 392 (Calcutta High Court)
[\[3\]](#) 1999(4) SLR 623 (Rajasthan High Court)
[\[4\]](#) 1999(5) ALD 60
[\[5\]](#) AIR 1977 SC 456
[\[6\]](#) AIR 1985 SC 703

- [\[7\]](#) 1996(1) ALD 528
- [\[8\]](#) (2006) II SLT 192
- [\[9\]](#) AIR 1964 SC 364
- [\[10\]](#) (1996) 1 SCC 327
- [\[11\]](#) (1998) 8 SCC 1
- [\[12\]](#) (2003) 1 SCC 692
- [\[13\]](#) (2005) 11 SCC 451
- [\[14\]](#) AIR 1955 SC 425
- [\[15\]](#) AIR 1964 SC 1419
- [\[16\]](#) (1976) 2 SCC 82
- [\[17\]](#) (2002)4 SCC 638